



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/153839

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed December 03, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on January 02, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Service correctly terminated Petitioner's Medicaid benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
With [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Yia Xiong, Income Maintenance Specialist II  
Milwaukee Enrollment Services  
1220 W. Vliet St., Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On July 1, 2013, the Petitioner submitted an application for Medicaid benefits, based upon a presumptive disability. (Exhibit 3, pg. 11)

3. On July 8, 2013, the agency sent Petitioner a notice indicating that his application for Presumptive Disability Medicaid benefits was approved. (Exhibit 3, pgs. 13-16)
4. On November 11, 2013, the agency contacted the DDB, and was told that the Petitioner was determined to be NOT disabled. (Exhibit 3, pg. 17)
5. On November 12, 2013, the agency sent Petitioner a notice indicating that his Medicaid benefits would be ending effective December 1, 2013, because he was not elderly, blind or disabled. (Exhibit 3, pg. 21)
6. On November 26, 2013, the Department of Health Services, Disability Determination Bureau (DDB) sent Petitioner a notice indicating that he was determined to be NOT disabled for purposes of receiving Medicaid benefits. (Exhibit 3, pgs. 18 & 19)

### **DISCUSSION**

There are a number of criteria that must be met in order for a person to be eligible for Medicaid benefits. One of the necessary criteria is that the applicant must be elderly, blind or disabled. *Medicaid Eligibility Handbook (MEH)* §4.1(1) It is undisputed that Petitioner is neither elderly nor blind.

Petitioner states that he is disabled because he suffers from a spinal cord injury.

“Disability” for Medicaid purposes is defined as, “The inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” *MEH* §5.2, *see also* §39.4.1 *EBD Assets and Income Table for the current SGA limits and* §26.1 *MAPP Introduction for the Medicaid Purchase Plan ( MAPP ) disability definition.*

“Disability and blindness determinations are made by the Disability Determination Bureau ( DDB ) in the Department of Health and Family Services.” *MEH* §5.2

Because the DDB has determined that Petitioner does not meet the legal definition of disabled, he is not eligible for further Medicaid benefits. (See also Exhibit 7)

Petitioner questioned why he previously received Medicaid benefits, if nothing has changed since his initial application for presumptive disability.

#### **5.9.1 Presumptive Disability Introduction**

Federal SSI law and regulations state that the SSI program can find an individual to be presumptively disabled and will be treated as a person with a disability until a final disability determination can be completed. To be treated as presumptively disabled by SSI means that the applicant’s benefits can begin before SSA, or its contracted agency, has formally determined the individual to be disabled.

Wisconsin's Medicaid program also allows a determination of presumptive disability.

Presumptive Disability (PD) is a method for temporarily determining a disability for an individual while a formal disability determination is being done by DDB. Presumptive disability is determined either by the DDB, or in some circumstances, by the IM worker. The regular disability application process ([5.3 Disability Application Process](#)) must still be completed for persons with a presumptive disability. **A presumptive disability decision stands until the DDB makes its final disability determination.**

**When the regular disability determination is denied by DDB, a new presumptive disability determination cannot be made for that individual unless there has been a change in the person's condition.**

*Emphasis added.*

*Medicaid Eligibility Handbook (MEH) §5.9.1*

Based upon the foregoing provisions, Petitioner was deemed presumptively disabled until the DDB could make its final determination. (See Exhibit 10) As discussed above, the DDB made a final determination in November 2013 that Petitioner was not legally disabled. As such, Petitioner no longer qualifies for Medicaid benefits.

The Petitioner expressed grave concerns because his spinal cord injury is going to go untreated, as are his mental health issues. However, it appears the Petitioner has completed a second application for Medicaid based upon a presumptive disability. (Exhibit 2) As such, the DDB will need to make a decision regarding whether to grant benefits based upon that new application. If it does not, the Petitioner can file another appeal.

The Petitioner should also note that the Badger Care+ program will open up to childless adults with income under 100% of the Federal Poverty level, effective April 1, 2014. They are now accepting applications at [Access.Wisconsin.gov](http://Access.Wisconsin.gov).

### **CONCLUSIONS OF LAW**

That the agency correctly terminated Petitioner's Medicaid benefits effective December 1, 2013.

**THEREFORE, it is**

**ORDERED**

That the Petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 10th day of February, 2014.

---

\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 10, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability